

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff/Respondent,

v.

CV 07-0513 JP/WPL
CR 02-2072 JP

ANDREW BEGAYE,

Defendant/Movant.

ORDER

On October 27, 2008, the magistrate judge filed his Proposed Findings and Recommended Disposition (PFRD) regarding Andrew Begaye's motion under 28 U.S.C. § 2255. (Doc. 213.) Begaye filed objections to the PFRD and a motion for leave to amend his § 2255 motion. (Doc. 214, 215.) On February 2, 2009, the magistrate judge filed a second PFRD regarding the motion for leave to amend. (Doc. 219.) The second PFRD, like the first, advised the parties that objections were due within ten days of service of the PFRD and that if no objections were filed, no appellate review would be allowed. To this date, no objections to the second PFRD have been filed.

The First PFRD

In his *pro se* motion under 28 U.S.C. § 2255, Begaye asserted that his trial counsel was ineffective in failing to present the testimony of certain alibi witnesses. The magistrate judge appointed new counsel for Begaye and held an evidentiary hearing. At the evidentiary hearing, as well as in his proposed findings of fact and conclusions of law, habeas counsel raised additional grounds for finding trial counsel ineffective. The magistrate judge determined that none of the grounds met the two-prong standard for ineffective assistance of counsel. *See Strickland v.*

Washington, 466 U.S. 668, 687-88 (1984). He therefore recommended that the § 2255 motion be denied.

Begaye's objections to the first PFRD are composed almost entirely of verbatim excerpts from his proposed findings of fact and conclusions of law. The objections provide no basis for rejecting the PFRD. Accordingly, after a *de novo* review, the objections are overruled.

The Second PFRD and The Motion for Leave to Amend

In his motion for leave to amend, Begaye seeks to add a claim that he is factually innocent of one of the charges upon which he was convicted. The magistrate judge recommended that the motion for leave to amend be dismissed for lack of jurisdiction because it is in effect a second or successive § 2255 motion. As noted above, no one has objected to this recommendation. Accordingly, it will be adopted as an order of the Court.

IT IS THEREFORE ORDERED that:

- 1) the PFRDs filed on October 27, 2008 and February 2, 2009 (Doc. 213, 219) are adopted as orders of the Court;
- 2) the motion to vacate, set aside or correct sentence under 28 U.S.C. § 2255 (Doc. 178) is denied;
- 3) the motion for leave to amend the motion under 28 U.S.C. § 2255 (Doc. 214) is dismissed for lack of jurisdiction; and
- 4) CV 07-0513 is dismissed.



JAMES PARKER
UNITED STATES DISTRICT JUDGE